Before the
Federal Communications Commission
Washington DC 20554

In re	)	
Modification of Parts 2 and 15 of the Commissions Rules for unlicensed devices and equipment approval	)	ET Docket No 03-201
Memorandum Opinion and Order	)	FCC 07-117

To the Commission

Petition for Reconsideration Based on New Facts
And
Petition for Reconsideration Based on Errors in Previously Asserted Facts and Arument

To the extent described herein, Telesaurus Holdings GB LLC ("Telesaurus") ("Petitioner")[1] hereby (1) petitions for reconsideration the above-referenced Memorandum Opinion and Order ("MO&O")[2] that dismissed the previously filed petition for reconsideration (the "2004 Recon") in the instant proceeding (the "Dismissal"), and in addition (2) petitions for reconsideration based on new facts described below that did not exist until after the 2004 Recon pleading cycle. Since the two petitions draw upon some of the same materials, it is more efficient to present these

[1] Telesaurus holds LMS Multilateration (herein, "M-LMS") licenses for spectrum within the 902-928 MHz band (in A and C blocks), obtained by pro forma assignment from Warren Havens ("Havens") noted in the 2004 Recon. The MO&O comments at ¶ 6 that there are no LMS-M systems in operation. As Telesaurus stated in the LMS-M NPRM, where the NPRM proposes to decimate the transmit power and time of use of LMS-M systems to the point where they could not succeed, this comment in the MO&O is a spurious suggestion of justification of concessions to Part 15 at expense of LMS-M). It is the FCC's own baseless NPRM that is the primary cause of blocking LMS-M development.

[2] *Memorandum Opinion and Order*, FCC 07-117, released June 22, 2007.

and decide upon these together.

The MO&O should be reversed and the relief requested in the 2004 Recon, as modified herein, should be granted for reasons given in the following sections, individually and collectively.

Initially, Telesaurus proposes the following forbearance as an alternative.

1. Forbearing of the "Part 15 Testing" requirement for Telesaurus

The Commission position in the MO&O is that the subject changes in Part 15 rules applicable to the LMS sub bands A, B, and C (the only spectrum at issue in the 2004 Recon) do not effect LMS-M, or in any case, the Commission may make changes in Part 15 rules applicable to these sub bands that are adverse to LMS-M with no notice and comment rulemaking in the LMS radio service. Telesaurus strongly disagrees, for reasons in the 2004 Recon, reasons noted below, and reasons in the pending case before the DC Circuit Court on this subject matter (see FN 21 in the MO&O). One reason is noted in these is that changing said Part 15 rules dramatically changes how LMS-M licenses must analyze LMS-M technology and deployment in relation to Part 15 technology and systems: the two are closely related. By changing Part 15 rules outside of LMS-M rulemaking, this "moves the target" under LMS rules: the testing rule (within 47 CFR §90.353(d)) and the use allowances under §90.353(b) and (c), and other LMS-M rules, for reasons noted below and previously.

Telesaurus proposes that the FCC, at minimum, forbear the requirement for Telesaurus to engage in any "testing" under §90.353(d) with regard to Part 15 systems as long as Telesaurus meets all other LMS-M rules for this wide-area ITS radio service, in conjunction with its determination, as reflected in the MO&O, that it can change Part 15 rules regarding the LMS-M A block spectrum outside any LMS-M sub band rulemaking. Telesaurus holds only LMS A-block licenses, except for the Sacramento B block license.

The other LMS-M licensees have expressed no view on these matters (the subject Part 15 rules changes and how they impact LMS-M) and thus need not be considered. This proposal for forbearance is not formally presented here (such proposals must be presented in a separate filing, Telesaurus understands); however, Telesaurus believes it appropriate to propose this here as a possible solution whereby Telesaurus and any affiliates, including Havens, would withdraw all challenges to Part 15 rule changes that they have pending before the FCC and any court (including as noted above) in exchange for grand of the above-noted forbearance. Then, the Commission can "move the target" with less adverse impact on Telesaurus since it would not have to re-do its technology selection assessment, inter-system interference modeling, and consequent Part 15-system testing methods and exercises each time the target changes.

2. The MO&O Asserted Incorrect Facts as a Basis,
And, Telesaurus Had No Need To Participate Earlier in the Part 15 Proceeding

The MO&O should be reversed and the relief requested in the 2004 Recon should be granted since the MO&O erred on all of the fundamental factual assertions based upon which it dismissed the 2004 Recon. Contrary to the MO&O, the 2004 Recon challenged the subject rulemaking decision with respect to the all of the rule changes in the LMS Multilateration ("LMS-M") sub-bands A, B, and C in 902-928 MHz. That is entirely clear. The MO&O also falsely asserted:

> The Commission's rules for spectrum sharing between LMS operations and Part 15 devices in the 915 MHz band were originally adopted in 1995, and were thus known to prospective applicants prior to the M-LMS auctions in 1999 and 2001.

That is false assertion to avoid a central, valid argument of the 2004 Recon. The "Commission rules" for LMS-M are being modified by the subject changes in Part 15 rules, and that was not known in 1999 or 2001, and such Part 15 rule changes beneficial to Part 15 device use and proliferation—by the Commission's own repeated logic (which

is obviously correct)—inescapably adversely affects LMS-M use of the same spectrum. It is contrary to the Administrative Procedures Act ("APA") to change rules of a radio service without notice in comment *directly in the radio service* being affected. Moreover, where a radio service is in a *shared* band, changes on one part (one services that has sharing rights), absolutely affects the other part. Allow one greater rights to its benefit, and it of course makes more use of the band and leaves less for the other sharer. The Commission cannot rationally suggest otherwise, as it indirectly does, in this proceeding. Indeed, it argues as just stated above in the original LMS-M rulemaking and in the pending LMS-M NPRM: it cannot now credibly suggest otherwise.

A change in Part 15 technical rules—to the degree these are effective in these LMS-M sub bands—absolutely change the LMS rules and also change the delicate balance of rights established in the entire LMS-M regulatory scheme. As the MO&O acknowledged, the LMS rules include a requirement for LMS licensees to test and afford a certain protection to Part 15 systems of devices prior to completing any LMS technology selection and deployment (47 CFR §90.353(d) and related discussions in several FCC Orders establishing this testing requirement and commenting on it on reconsideration). As was challenged in the dismissed 2004 Recon, LMS technology selection, testing, and deployment architecture are—by rule—dependent on the technical rules for Part 15 and Part 15 systems. Changes in Part 15 technical rules require LMS-M licensees (1) to re-structuring the complex modeling and procedures needed to comply with §90.353(d), for benefit of Part 15 devices, and also (2) to determine whether, given the probability of an increase in use of the band by Part 15 devices under the new, desired, more flexible technical allowances, the applications and architecture that may be still viable for LMS-M systems.

A LMS system using certain technology will have resistance to interference from

Part 15 device systems, and cause interference to, such systems, dependent on what technology is used in the Part 15 systems and what the applications are, and the level of proliferation.

As noted above, under the APA, changes to a radio service must be made by notice and comment rulemaking in that radio service. Since the subject Part 15 rule changes extended to the LMS-M sub bands, and in fact changed rights and obligations of LMS-M licenses, such changes in such sub bands had to be in LMS-M rulemaking (and also Part 15 rulemaking) but this was not done. Telesaurus had no obligation to earlier participate in the subject Part 15 rulemaking. Instead the Commission failed its obligation as just stated. The MO&O dismissal of the 2004 Recon is in error and should be revised on this basis alone.

2. LMS NPRM is Being Used for Increased Part 15 Rights, and Demonstrates Validity of the 2004 Recon (a New Fact)

The LMS-M NPRM, docket 06-49, commenced after the 2004 Recon pleading cycle, demonstrated clearly that the facts and arguments in the 2004 Recon, advanced herein, are correct and that the MO&O is incorrect regarding the Dismissal. This NPRM could not be more clear in what the FCC proposed in the NPRM, and in what is repeatedly entertaining in a series of meetings (an ad hoc hearing, at least, with no public notice and participation) between FCC staff and the "Part 15 Coaltion" and the FCC staff and Progeny LMC LLC—the FCC believes, as is obviously true, that allowing favorable changes in one radio service in a shared band will adversely affect the other services in said shared band (absent intelligent distinction of the services in time and space, etc.—for which neither the FCC, nor

the Coalition, nor Progeny have shown any clue of a solution).[3] This new fact support the arguments herein that Part 15 rule changes affect LMS-M and vice versa. LMS-M is the licensed service with vested license rights—not Part 15. Where Part 15 rule changes affect LMS-M, they must be within a LMS-M rulemaking to comply with APA requirements, and when not, they are invalid and must be rescinded as requested in the 2004 Recon and herein.

The FCC should, at minimum (if it does not simply rescind and take no action on the subject Part 15 rules changes in LMS-M sub bands) rescind the subject Part 15 rule changes that involve the LMS-M sub bands and introduce those in the pending LMS-M NPRM, and give appropriate pleading cycle, for the entire related set of rule changes in both services to be considered.

4. Demonstrated Prejudice and Abrogation of Duty to be Expert and Impartial

Since the end of the pleading cycle in the 2004 Recon, the Commission staff have demonstrated repeated prejudice toward Telesaurus and its affiliates attempts to obtain and develop LMS-M and AMTS (and other) licenses for US Intelligent Transportation Systems under established Commission rules and precedents.[4] This includes but is not limited to:

[3] Telesaurus on the other hand, showed how LMS-M for wide-area ITS radio service, exactly as the Commission intended in allocation of LMS-M spectrum and coming up with the current well-balance rules, will be focused on vehicular use along highways with peak use at rush hour, whereas, Part 15 is mostly used in localites away from highways and has a inverse peak time of use. Telesaurus argued this in RM-10403.

[4] These attempts and developments are extensively described at: www.telesaurus.com and in filings by Telesaurus and affiliates in the LMS-N NPRM, docket 06-409, including their written ex parte presentations in year 2007, and a supporting filing by the ITS America.

(1) The Commission entirely ignored all Telesaurus and affiliates (including Warren Havens) filings in RM-10403 and instead parroting baseless, inaccurate, bald assertions by Progeny LMS LLC[5] in RM-10403 as the basis of the LMS-M NPRM which proposes to gut the LMS-M ITS radio service of the power and time-of-use needed for any wide-area ITS radio service (but possibly grant a windfall to Progeny to sell out its spectrum to a speculator). This is against the Administrative Procedures Act to call for pubic notice and comment, and then "terminate" the proceeding except to selectively take what Commission staff want to take into a NPRM for private interests. It is also Unconstitutional "taking" under the Fifth Amendment as interpreted in the US Supreme Court's *Penn Central* precedent, *Penn Central v. New York*, 438 U.S. 104, since it has made impossible the Telesaurus business plan for using LMS-M (exactly as the Commission instructed in LMS-M rulemaking) for wide-area ITS radio service. Indeed, in this NPRM proceeding, the Commission has accommodated repeated presentations by a non-entity "Part 15 Coalition" which ended up proposing, in Spring of 2007, that LMS-M power and time of use be decimated so that Part 15 could have even more free reign in all of 902-928 MHz, for its members (mostly critical infrastructure entities) that the FCC and NTIA each found have grossly underused its extensive free grants of spectrum.[6] At the same time, when Telesaurus asked for roughly equal time to that

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[5] As demonstrated in this NPRM by Telesaurus, Progeny LMS LLC never bid for or paid for any LMS-M licenses. It obtained LMS-M licenses by misleading the FCC as to fundamental facts that are clear in public records on file with the State of Indiana Secretary of State and court system, as demonstrated in said filing. It must be questions as to how this licensing took place and is being maintained. It is not according to FCC rules and the Communications Act.

[6] See references cited in the Telesaurus Ex Parte presentation filed in this docket on or about 7. 23.07.

granted to this "Coalition" in successive meetings, FCC senior staff declined, offering only one meeting.

(2) FCC staff have blatantly refused to enforce fundamental auction rules, including 47 CFR 1.2105, and many other FCC rules, with regard to Telesaurus affiliates competition in Auction 61, to deny them their high bids under law, and instead to grant licenses to another bidder who, under the rules and precedents, was disqualified by its own failures to disclose the real party in control and its affiliates and their gross revenues (and the lack of the applied for bidding discount). This is not a close call. Telesaurus and affiliates intend to take to court matters of clear violation of the Communications Act, FCC rules, and Constitutional protections, and where appropriate, to seek remedies against staff who concertedly acted under color of FCC employment to violate such federal law.

For purposes of the preceding section 4, to demonstrate prejudice, Telesaurus references and incorporates herein all if its and its affiliates filings in (1) the LMS-M NPRM and the preceding RM-10403, and (2) the Auction 61 proceeding regarding the short-form and long-form of Maritime Communications/ Land Mobile, and (3) the Auction 72 proceedings involving the Telesaurus affiliate, AMTS Consortium LLC as a party.

Telesaurus intends to assert in court, if the matters of this Petition are not resolved in favor of Telesaurus and are appealed to court, that there is a clear prejudice of the FCC against Telesaurus and its affiliates, and that fatally taints Commission decisions related to these entities, and changes the standard of review and burden of proof, and should be cause for review *de novo*, at minimum. Where

the FCC acts neither expertly or impartially, it is not entitled to deference in court, but should be held to a high burden of proof on any related matter.

Current Rulemaking Not Forum to Deal with Operational Relationship

The MO&O is incorrect in its suggestions at ¶12 that the current M-LMS Notice of Proposed Rulemaking proceeding (the "LMS NPRM")[7] is the appropriate one in which Telesaurus address its concerns about the subject Part 15 rule change proceeding in ET Docket No. 03-201. The appropriate forum is the instant one since it is the one in which the rule changes have been proposed and adopted and any discussion of such rule changes in the LMS NPRM would be late and as such dismissed. As stated in the 2004 Recon and above, the proper proceeding for the Part 15 rule changes affecting the 902-928 MHz band to have actually been addressed in was a Part 90 rulemaking proceeding since the changes to those 900MHz Part 15 rules clearly affected the M-LMS licensees, their license rights and the existing rules including but not limited to Section 90.353(d). However, such a proper rulemaking was not conducted per the APA. As such, the entire subject proceeding should be reconsidered, the rule changes rescinded with respect to the 902-928 MHz band, and a proper rulemaking per the APA initiated.

Since 902-928 MHz is a shared band, then any proposed changes in Part 15 or Part 90 rules must be done in a docket involving both, not separately. Common sense dictates this. Otherwise, either Part 15 users or M-LMS licensees, as has

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[7] *See Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands, Notice of Proposed Rulemaking* in WT Docket No. 06-49, 21 FCC Rcd 2809 (2006).

happened in this case, can have the rules and operational environment on which they depend adversely affected in proceedings unrelated to their specific services.

In addition, the LMS NPRM has not afforded any flexibility to LMS-M, but only proposes more concessions to Part 15 (proposing to cut the power and time of use to M-LMS, a wide-area Intelligent Transportation Service radio service, is not flexibility, but debilitating, and only stands to benefit Part 15 use of the spectrum band). It is not partity in granting flexibility to give unlicensed entities with no rights to the spectrum more technical rights, and to cut back technical rights (power and time of use) to the licenesed users-- that is ludicrous and lacks candor.

Respectfully submitted,

/s/ *Warren Havens*

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